

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 141 OF 2017  
WITH  
CIVIL APPLICATION NO. 2294 OF 2015**

1. Syed Naim Syed Khudbhaksh,  
(Died by L.R.s.)
  - 1-a. Syed Yunus s/o. Syed Naim,  
Age. 34 years, Occ. Labour,  
R/o. Gavandi Mohalla, Badnapur,  
Tq. Badnapur, Dist. Jalna.
  - 1-b. Syed Yusuf S/o. Syed Naim  
Age. 31 years, Occ. Labour,  
R/o. As above.
  - 1-c. Syed Feroz S/o. Syed Naim  
Age. 29 years, Occ. Labour,  
As above.
  - 1-d. Syed Parvin Syed Naim  
Age. 34 years, Occ. Household,  
R/o. As above.
  - 1-e. Syed Nasrin Syed Naim,  
Age. 32 years, Occ. Household,  
R/o. As above.
  - 1-f. Syed Yasmin Syed Naim  
Age. 26 years, Occ. Household,  
R/o. As above.
  2. Syed Abedabee W/o. Syed Naim,  
Age. 39 years, Occ. Household,  
R/o. As above.
- ....Applicants/Appellants  
(Orig. Deft. Nos. 1 & 2)

Versus

1. Shaikh Majid S/o. Shaikh Jainoddin,  
Age. 56 years, Occ. Business,  
R/o. Shankar Nagar, Badnapur,  
Tq. Badnapur, Dist. Jalna.

...Non Applicant/ Resp. No. 1  
(Orig. Non applicant No. 1)

2. Nagar Panchayat,  
Badnapur, Tq. Badnapur,  
Dist. Jalna  
Through Chief Officer.

Advocate for Appellant : Mr. M.K. Deshpande  
Advocate for Respondent No. 1 : Mr. S.S. Panale  
APP for Respondent No. 2 : Mr. A.M. Phule

**CORAM : RAJESH S. PATIL, J.**

**Judgment reserved on : 10.10.2022**  
**Judgment pronounced on : 10.11.2022**

**JUDGMENT :**

1. Heard the learned Counsel for the parties.
2. The Second appeal is filed by original defendant Nos. 1 and 2, challenging the concurrent findings recorded by both the lower courts. The learned District Judge, Jalna, by judgment and order dated 25.08.2014, in Regular Civil Appeal No. 165/2010, thereby, confirming the judgment and order dated 31.07.2010, passed by the learned Civil Judge Senior Division, Jalna, in Special Civil Suit No. 90/2008.
3. The subject matter of the suit is a plot of land admeasuring 55.7 sq.m. bearing Village Panchayat No. 1029, wherein, there is a structure standing thereon, situated at Badnapur, Taluka Jalna (now Taluka Badnapur), District

Jalna. The original respondent No. 1 who was the plaintiff before the trial Court filed Special Civil Suit No. 90/2008, seeking reliefs of declaration that the mutations in the name of defendants are illegal; and also prayed for perpetual injunction restraining the defendant from disposing of the suit property.

4. The plaintiff in his suit stated that his wife's mother namely Syed Aminabi Syed Khudabaksh was staying with him. He further stated that defendant No. 1 is the real brother of his wife, and defendant No. 2 is the wife of defendant No.1. The defendant No. 3 is the Gram Panchayat, Badnapur.

5. It is the case of the plaintiff that the suit property was allotted to him for residential purpose under the Gavthan Development Scheme on 25.09.1987, by way of document "Kabala". Further possession of the said suit property was handed over to the plaintiff on 28.09.1987, by the Talathi. Thereafter, possession receipt was issued, so also, the plaintiff got permission to construct the structure on the said suit plot from Village Panchayat, Badnapur for construction of a house. It is further stated that plaintiff is an illiterate and simpleton person, who use to visit various villages for selling sweets. The plaintiff's mother-in-law namely Syed Aminabi took advantage of plaintiff being wandering in different places and forged documents to transfer the records of the suit property in her name with the help of Village Panchayat, Badnapur.

6. The defendant No. 1 who is the son of Syed Aminabi in his written statement stated that the plaintiff had donated the suit property in favour of Aminabi and, accordingly, in the monthly meeting held on 27.02.1993, a resolution No. 7 was passed by the Village Panchayat allowing her application and, thereby, mutating her name in the suit property. So also, documents in the form of Consent Deed dated 17.07.1991, was furnished by the plaintiff. After the death of Syed Aminabi, the Defendant No. 1 got the suit property mutated in his name and, thereafter, on 25.08.2003, he sold the suit property to his wife Defendant No. 2.

7. After the issues were framed by the trial Court, the plaintiff examined in all five witnesses, including the plaintiff himself and also his wife who is daughter of Syed Aminabi. The defendant Nos. 1 and 2 examined two witnesses i.e. defendant No. 1 and the Up-sarpanch.

8. The trial Court considered all the documents on record filed by the plaintiff namely "Kabala" dated 25.09.1987 possession receipt, construction permission, electricity bill, certified copy of Kabala obtained on 10.05.2010 and also the document produced by defendant namely resolution dated 27.02.1993 of Gram Panchayat, Badnapur, P.R. Card, Exhibit 69 document dated 25.09.1987, wherein, plaintiff's name is cancelled and the name of Syed Aminabi is written by her.

9. The trial Court after considering all these documents came to a finding that the disputed document Exhibit 69 appeared to be forged document as the name of plaintiff was cancelled by pen and on the top, the name of Syed Aminabi was inserted by a blue ball pen. Atleast on three different places on the said document, on every such scoring there is a seal of Tahsildar Badnapur is inserted. At the top, there is no signature of Tahsildar Badnapur. There are signatures on the remaining three places. But the mode of all these three signatures is quite different from each other. Beneath the seal at the bottom there is one initial, which is also quite different from the said three signatures, so also from the signature of Tahsildar, Jalna. It is pertinent to note that this document was issued by Tahsildar, Jalna. It remains an unanswered mystery that when Tahsildar, Jalna, had issued this order, then how the original order came from Tahsildar, Badnapur. This document was produced by defendant. The plaintiff has stated in the plaint that deceased Aminabi has misused the original document "Kabala" dated 25.09.1987, and forged the same. It is also stated in evidence by the wife of plaintiff, who happens to be the daughter of Syed Aminabi that the original document of "Kabala" was given by her into the custody of her mother Syed Aminabi. It is also stated that at the relevant time plaintiff and the said Syed Aminabi were residing jointly. Both these facts are not challenged during the cross-examination. Considering all these facts, the trial Court have come to a finding that Syed Aminabi had committed a fraud by fabricating the document

“Kabala” (Exhibit 69). Accordingly, the trial Court decreed the suit of the plaintiff and further declared that the plaintiff is allottee pursuant to document “Kabala” dated 25.09.1987, and the sale deed executed by defendant No. 1 in favour of his wife – defendant No. 2 is not a legal document. Further, the defendant Nos. 1 and 2 were directed to deliver vacant possession of the suit property to the plaintiff within two months from the date of decree.

10. The defendant Nos. 1 and 2 filed appeal against the judgment and decree of the trial Court being Regular Civil Appeal No. 165/2010 before the learned District Judge, Jalna. The said appeal was heard by the learned District Judge, Jalna, and by its judgment and decree dated 25.08.2014, dismissed the appeal with costs.

11. The original defendant Nos. 1 and 2, thereafter, filed the present Second Appeal No. 141/2017 with Civil Application No. 2294/2015 on 23.12.2014, seeking stay to the execution and operation of impugned judgment and order passed by both the Courts.

12. From the date of the filing of the Second Appeal on 23/12/2014, till the date of hearing of this Second Appeal, i.e. almost 8 years, there is no ad-interim stay granted to the operation of the judgment and order of both the lower Courts below.

13. The Advocate for the Appellant to canvas his point relied upon two judgments:

- {i} AIR 1951 SC 280 Bishundeo Narain Vs. Seogeni Rai and
- {ii} LAWS(ORI)-1999-8-14 Natabar Behera Vs. Batakrushna Das.

14. On behalf of the Respondents following judgments were referred to:

- {i} Gita Kumari Vs. Central Administrative Tribunal,  
Laws (P & H)- 2009 – 3- 154
- {ii} S.P.Chengalvaraya Naidu (dead) by L.R.s Vs. Jagannath  
(dead) by L.R.s and others. AIR 1994 SC 853
- {iii} Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat  
(2008) 12 SCC 353
- {iv} Balwant N. Viswamitra Vs. Yadav Sadashi Mule  
(2004) 8 SCC 706
- {v} Vyankatesh Deshpande Vs. Sou. Kusum Kulkarni  
AIR 1976 Bom 190.

15. I have heard both the Counsel for the parties at length who have extensively argued the case. I have gone through the record and proceedings of the trial Court and mainly document Exhibit 42 being the “Kabala” dated 25.09.1987, Exhibit 43 being the possession receipt dated 28.09.1987, Exhibit 46 being the construction permission issued, Exhibit 87 being the certified copy of Exhibit 42 obtained on 10.05.2010. I have also gone through the evidence led by the parties. After considering the testimony of

the witnesses and the documents on record, no fault can be found to the finding of the fact recorded by the trial Court. The document produced by the defendant (the present appellant) namely Exhibit 69 appears to be a fraudulent document, wherein, there is scoring.

16. I have gone through both the judgments referred by the Advocate for the Appellants; the facts of both these cases are different then the present matter. In the present matter there is a element of fraud involved.

17. In view of this position, I find that there is no merit in the Second Appeal and no substantial question of law arises and hence the Second Appeal is dismissed with costs. Civil Application also stands disposed off as dismissed.

**( RAJESH S. PATIL, J. )**